

In the Matter of the Accusation Against:)	
)	
MARK EDWARD CLONCH)	Case No. 2001-08-1139
13405 Melody Road)	
Chino, California 91709)	OAH No. L-2001110353
)	
Physical Therapist's License)	
No. PT-11274)	
)	
Respondent.)	
)	

This matter was heard by Vincent Nafarrete, Administrative Law Judge, on April 8, 2002, at Los Angeles. Complainant was represented by Mia Perez-Castille, Deputy Attorney General. Respondent was present and represented by Barry O. Bernstein, Attorney at Law.

The proposed decision of the Administrative Law Judge was submitted to the Physical Therapy Board (hereinafter "Board") on May 8, 2002. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter on August 23, 2002 issued a Notice of Nonadoption of Proposed Decision. Written argument having been received from both parties and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board pursuant to Section 11517 of the Government Code hereby makes the following decision:

1. The Accusation was made and filed by Steven K. Hartzell in his official capacity as Executive Officer of the Physical Therapy Board, Department of Consumer Affairs, State of California.

2. On or about December 23, 1982, the Board issued physical therapist's license no. PT-11274 to Mark Edward Clonch of 13405 Melody Road, Chino Hills, California (hereinafter "respondent"), to practice physical therapy in the State of California. Said license expires on March 31, 2004, and is in full force and effect.

3. Respondent has been licensed as a physical therapist for 19 years and has no history of disciplinary action with the Board. Prior to last year, respondent had no prior criminal history.

4. (A) On or about April 12, 2001, before the Superior Court of California, County of San Bernardino, in People v. Mark Edward Clonch, Case No. FCH03900, respondent was convicted on his plea of nolo contendere of violating one count of Penal Code Section 288(a) (lewd or lascivious acts upon a child) and one count of Penal Code Section 288(b)(2) (oral copulation upon a person under 16 years of age), felonies and crimes involving moral turpitude.

(B) Following his plea, respondent was sentenced to sixty (60) months of supervised probation on condition, in part, that he serve 365 days in the county jail with credit of 140 days served, report to and cooperate with the probation in a plan for rehabilitation, maintain employment, not leave the State without written permission of the probation officer, keep the probation officer informed of his residence and cohabitants, not use or possess controlled substances without a medical prescription, not possess or consume alcoholic beverages, participate in a counseling program and attend a sexual offender's group therapy program, register as sexual offender, not associate with persons under the age of 18 years, not possess any obscene matter, not have contact with the victim, and not accept employment where he has access to with children without first notifying the employer of his offense and submitting proof of notice and consent to the probation officer.

(C) The facts and circumstances of the conviction are that, in or about 1982, respondent began participating as a volunteer mentor in the Big Brothers program and was introduced to the victim. Respondent was 22 years old and the victim was six years old. The victim's mother was a single parent and she wanted her son to have a male or father figure in his life. During the next several years, respondent saw the boy several times each month and developed a close relationship with him, his mother, and their extended family. Respondent took the boy on vacations and holidays to such places as the Grand Canyon, Las Vegas, Florida, and Washington, D.C. Respondent also had the boy come over to his Chino Hills home for overnight visits. From in or about 1982 until in or about 1990, when the boy was between the ages of six and 16 years, respondent sexually molested the boy on an undetermined number of occasions by fondling the boy's genitals and orally copulating him.

(D) Respondent's conviction for lewd and lascivious acts and oral copulation upon a minor under 16 years of age was for crimes substantially related to the qualifications, functions, or duties of a licensed physical therapist.

5. The victim did not report that he had been sexually abused by respondent until in or about May 2000 when he was 24 years old. His mother had no inkling about the sexual molestations and feels very guilty and betrayed by the relationship with respondent. The victim has not done well in school or work and has been unable to maintain employment or relationships with women.

6. Respondent will remain on supervised probation for his conviction for another four years until April 2006.

7. Prior to his sentencing in April 2001, respondent was placed in a diagnostic facility for 90 days for observation and evaluation. Following his stay in the diagnostic facility, respondent received the sentence described in Paragraph 4(B) above.

8. Pursuant to his sentencing order, respondent has been receiving weekly counseling and therapy from Steve Garman, Psy.D., a clinical psychologist in Upland and Chino.

9. The costs of investigation and enforcement of this matter total \$1,932, which was established by the certification of costs [Exh. 3].

LEGAL CONCLUSIONS

1. Grounds exist to revoke or suspend respondent's physical therapist's license pursuant to Business and Professions Code Sections 2660 and 490 for conviction of crimes of moral turpitude which are substantially related to the qualifications, functions, or duties of a licensed physical therapist, based on Findings 4-5 above.

2. It was not established that respondent is rehabilitated from his conviction for lewd and lascivious acts and oral copulation upon a minor. The crimes for which respondent was convicted are serious. The conviction is recent, for respondent was sentenced in April 2001 and he has four more years of supervised criminal probation. Respondent is receiving weekly therapy from a clinical psychologist.

Respondent's counsel argues that his client is rehabilitated because the crimes took place more than 12 to 15 years ago. However, respondent's counsel elected not to present any written evidence of rehabilitation or to have his client testify at the hearing. Complainant's counsel likewise elected not to call respondent as a witness and examine him as if under cross-examination pursuant to Government Code Section 11513(b).

Although respondent's underlying offenses are not recent and although respondent has no prior disciplinary or criminal record, the obligation to protect the public health and safety compels the revocation of respondent's license.

3. Grounds exist to direct respondent to pay the reasonable costs of investigation and enforcement pursuant to Business and Professions Code Section 125.3 in that respondent violated the Physical Therapy Practice Act, based on Conclusions of

Law No. 1 and Finding 4 above. The reasonable costs of investigation and enforcement are deemed to be in the amount of \$1,932, as set forth in Finding 9 above.

ORDER

WHEREFORE, the Physical Therapy Board hereby makes the following Order:

Physical Therapist License No. PT-11274 and licensing rights previously issued by the Physical Therapy Board to respondent Mark Edward Clonch, are revoked, based on Conclusions of Law nos. 1-2, jointly and for all.

Respondent shall reimburse the Board for its costs of investigation and enforcement costs in the amount of \$1,932.00.

IT IS SO ORDERED this 8th day of November, 2002.

Original Signed By
Donald A. Chu, PhD, PT, President
Physical Therapy Board of California